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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/517,613
Filing Date: March 02, 2000
Appellant(s): SRINIVASAN, THIRU

Gregory T. Fettig Reg. No. 50843
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/01/2007 appealing from the Office action mailed 03/13/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUNDS OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief. Claim 21 was improperly "Withdraw" when it should be "Canceled" and therefore the Examiner still holds the rejection since the Appellant did not properly Cancel the claim.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6248946	Dwek	6-2001
6587127	Leeke et al.	7-2003
6389467	Eyal	5-2002
5987103	Martino	11-1999
6601237	Ten Kate et al.	7-2003
5953005	Liu	9-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "said scheduler is further configured to receive a second list created by an entity in the data network, different than said website searched for said multimedia file, said second list including an identifier of a multimedia file from said entity in the data network and wherein said scheduler is also configured to receive a schedule, created by said entity in the data network, of the availability of said multimedia file from said entity in the data network" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The act of storing a multimedia file is taught in claim 6 which claim 8 is dependent on.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 21 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not describe the limitation of, "said scheduler is further configured to receive a second list created by an entity in the data network, different than said website searched for said multimedia file, said second list including an identifier of a multimedia file from said entity in the data network and wherein said scheduler is also configured to receive a schedule, created by said entity in the data network, of the availability of said multimedia file from said entity in the data network", assuming that the entity has a first and a second list. Applicant is asked to point out in the specification and drawings where in a second list is created. If no explanation is given, then the Examiner will assume that the Applicant means to have the scheduler on multiple devices which can access a web site for different multimedia at the same time.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Dwek (6248946).

Referencing claim 1, Dwek teaches a system for automatically retrieving and playing multimedia files, comprising:

a network access interface through which access to a data network may be attained, (e.g., 4, lines 25 – 59);

a processing module configured to search the data network for a first multimedia file and to return information including an identifier of said first multimedia file, a first location of said first multimedia file and a first datum relating to a first schedule of the availability of said first multimedia file, wherein said processing module is further configured to categorize said first multimedia file and create first categorization information relating to said first multimedia file, (e.g., col. 6, lines 15 – 52);

wherein said processing module is configured to search the data network for a second multimedia file and to return information including a second identifier of said second multimedia file, a second location of said second multimedia file and a second datum relating to a second schedule of the availability of said second multimedia file, wherein said processing module is

further configured to categorize said second multimedia file and create second categorization information relating to said second multimedia file, (e.g., col. 6, lines 15 – 52);

wherein said processing module, said first location, and said second location are situated within distinct domains within the data network, (e.g., col. 6, lines 15 – 52);

a selection interface in communication with said processing module which provides for presentation of the returned information, and is configured to receive and process a selection for accessing a selected multimedia file from the data network and compile a download schedule, (e.g., col. 6, lines 15 – 52);

a file download device in communication with the selection interface which, based on the download schedule, automatically accesses said first multimedia file at said location through said network access interface and downloads the selected multimedia file, (e.g., col. 4, line 60 – col. 5, line 30).

As per claim 2, Dwek teaches including a centralized location on the data network employable to search the data network for a second multimedia file, receive information including an identifier of said second multimedia file, a location of said second multimedia file, a datum relating to a schedule of availability of said second multimedia file and categorization information relating to said second multimedia file, and provide said information to the processing module, (e.g., col. 4, lines 16 – 43 & col. 8, lines 26 – 67).

Referencing claim 3, Dwek teaches the data network is the Internet, (e.g., Abstract et seq.)

Referencing claim 4, Dwek teaches the interface, processing module, selection interface, and download device are configured on a personal computer, (e.g., col. 3, lines 40 – 56).

Referencing claim 5, Dwek teaches at least one of: the processing module, the selection interface, and the file download device are configured as plugins in a web browser installed in the personal computer, (e.g., col. 2, line 41 – col. 3, line 9 & col. 4, lines 16 – 43).

Referencing claim 6, as closely interpreted by the Examiner, Dwek teaches the selection interface includes at least one of:

a first selection for real time play of said first multimedia file which is downloaded, (e.g., col. 4, line 53 – col. 5, line 25);

a second selection for storing in a memory said first multimedia file which is downloaded in memory, (e.g., col. 4, line 53 – col. 5, line 25).

Referencing claim 7, Dwek teaches an interface is provided for restricting categories of multimedia files to be presented by the selection interface, (e.g., col. 7, lines 31 – 50)

Referencing claim 8, Dwek teaches a memory to which said first multimedia file may be downloaded, (e.g., col. 4, line 53 – col. 5, line 25).

Referencing claim 9, Dwek teaches the system includes a media player for playing said first multimedia file in real time, (e.g., col. 4, line 53 – col. 5, line 25).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 10, 11, 13, 14, 17, 18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwek in view of Leeke et al. (6587127) (hereinafter Leeke) and in further view of Eyal (6389467).

Referencing claim 10, Dwek teaches a method of retrieving multimedia files over a data network from a remote site in connection with the data network, comprising the steps of:

providing a central processor for searching a plurality of multimedia for a plurality of multimedia files and a schedule of the availability of said plurality of multimedia files, categorizing said plurality of multimedia files, and creating a listing containing information relating to said plurality of multimedia files, (e.g., col. 4, lines 34 – 62);

presenting an interactive interface which includes the listing and through which individual selections may be made for downloading the multimedia files from at least one of the plurality of multimedia, (e.g., col. 6, lines 15 – 52);

receiving an input through the interactive interface selecting a particular number of the plurality of multimedia files from the listing, (e.g., col. 4, line 60 – col. 5, line 30);

compiling a download schedule based on the received input, wherein the schedule includes a description of the multimedia file selected, time for the download, and download information, (e.g., col. 9, lines 12 – 45);

based on the input received through the interface, accessing and downloading over the data network, the selected multimedia files from the selected multimedia website, (e.g., col. 4, line 60 – col. 5, line 30),

but does not specifically teach a plurality of websites;

download information, including the domain;

wherein said plurality of multimedia websites searched comprise at least two websites in distinct domains of the data network;

the schedule including day and time for the download.

Leeke teaches compiling a download schedule based on the received input, wherein the schedule includes a description of the multimedia file selected, day and time for the download, and download information, (e.g. col. 19, line 66 – col. 20, line 42 & col. 14, lines 52 – 63 & col.15, lines 18 – 50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Leeke with Dwek so a user can view when a multimedia file was downloaded exactly or when a multimedia will be downloaded so the user can select future multimedia to download at a specific time.

Eyal teaches a plurality of websites, (e.g., col. 1, line 63 – col. 2, line 26);

download information, including the domain, (e.g. col. 2, lines 7 – 42);

wherein said plurality of multimedia websites searched comprise at least two websites in distinct domains of the data network, (e.g. col. 2, lines 7 – 42). It would have been obvious to one having

ordinary skill in the art at the time the invention was made to utilize multiple websites and multiple multimedia files, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.*

Referencing claim 13, Dwek teaches the multimedia files are retrieved according to a time schedule, (e.g. col. 9, lines 13 – 30).

As per claim 21, as closely interpreted by the Examiner, Dwek teaches said scheduler is further configured to receive a second list created by an entity in the data network, different than said website searched for said multimedia file, said second list including an identifier of a multimedia file from said entity in the data network and wherein said scheduler is also configured to receive a schedule, created by said entity in the data network, of the availability of said multimedia file from said entity in the data network, (e.g., col. 9, lines 18 – 57).

Claims 11, 14, 17, 18 and 20 are rejected for similar reasons as stated above.

Claims 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwek, Leeke and Eyal as applied to claims 10 and 11 above, and in further view of Martino (5987103).

As per claim 12, Dwek, Leeke and Eyal do not specifically teach only a predetermined number of multimedia files may be stored in memory. Martino teaches only a predetermined number of multimedia files may be stored in memory, (e.g. col. 9, lines 39 – 67). It would be obvious to one

skilled in the art at the time the invention was made to combine Martino with the combine system of Dwek, Leeke and Eyal because it would be more efficient if there was a predetermined number of multimedia files stored because it could free up space to allocate of other files that my require more memory then other multimedia files.

As per claim 19, Dwek, Leeke and Eyal teaches the listing is created and transmitted as disclosed above, but does not specifically teach the listing is created and transmitted automatically on a periodic basis. Martino teaches the listing is created and transmitted automatically on a periodic basis, (e.g. col. 10, lines 27 – 38). It would be obvious to one skilled in the art at the time the invention was made to combine Martino with the combine system of Dwek, Leeke and Eyal because it would be more convenient for the system to automatically create and transmit the list so to save time and to automatically update any files that are old.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dwek, Leeke and Eyal as applied to claims 10 and 13 above, and in further view of Ten Kate et al. (6601237) (hereinafter Ten Kate).

Referencing claim 16, as closely interpreted by the Examiner, Dwek, Leeke and Eyal do not specifically teach any scheduling conflicts between the downloading of multimedia files are detected and the downloading is rescheduled as necessary to resolve conflicts. Ten Kate teaches any scheduling conflicts between the downloading of multimedia files are detected and the downloading is rescheduled as necessary to resolve conflicts, (e.g. col. 6, lines 32 – 46). It would

have been obvious to one of ordinary skill in the art, at the time the invention was conceived, to combine Ten Kate with the combine system of Dwek, Leeke and Eyal because if more than one multimedia is desired at the same time but only one can be obtained at a time it would be advantageous for a system to reschedule a transmission of a multimedia file that a user would desire so the user is able to receive what was requested without having to re-request for the multimedia file.

Second Office Action

Claims 1 – 14 and 16 – 21 are presented again for examination.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Referencing claim 1, Liu teaches a system for automatically retrieving and playing multimedia files, comprising:

a network access interface through which access to a data network may be attained, (e.g., Fig. 1 & col. 3, lines 35 – 64);

a processing module configured to search the data network for a first multimedia file and to return information including an identifier of said first multimedia file, a location of said first

multimedia file and a datum relating to a schedule of the availability of said multimedia file, wherein said processing module is further configured to categorize said first multimedia file and create categorization information relating to said first multimedia file, (e.g., col. 6, line 28 – col. 7, line 3);

wherein said processing module is configured to search the data network for a second multimedia file and to return information including a second identifier of said second multimedia file, a second location of said second multimedia file and a second datum relating to a second schedule of the availability of said second multimedia file, wherein said processing module is further configured to categorize said second multimedia file and create second categorization information relating to said second multimedia file, (e.g., col. 6, line 28 – col. 7, line 3);

wherein said processing module, said first location, and said second location are situated within distinct domains within the data network, (e.g., col. 6, line 28 – col. 7, line 3);

a selection interface in communication with said processing module which provides for presentation of the returned information, and is configured to receive and process a selection for accessing a selected multimedia file from the data network and compile a download schedule, (e.g., Fig. 2 & col. 6, line 28 – col. 7, line 3);

a file download device in communication with the selection interface which, based on the download schedule, automatically accesses said first multimedia file at said location through said network access interface and downloads the selected multimedia file, (e.g., col. 2, lines 34 – 60 & col. 3, line 65 – 19).

As per claim 2, Liu teaches including a centralized location on the data network employable to search the data network for a second multimedia file, receive information including an identifier of said second multimedia file, a location of said second multimedia file, a datum relating to a schedule of availability of said second multimedia file and categorization information relating to said second multimedia file, and provide said information to the processing module, (e.g., col. 3, lines 34 – 64 & col. 6, line 28 – col. 7, line 3).

Referencing claim 3, Liu teaches the data network is the Internet, (e.g., col. 8, lines 20 – 33).

Referencing claim 4, Liu teaches the interface, processing module, selection interface, and download device are configured on a personal computer, (e.g., col. 3, lines 53 – 64).

Referencing claim 5, Liu teaches at least one of: the processing module, the selection interface, and the file download device are configured as plugins in a web browser installed in the personal computer, (e.g., col. 4, lines 34 – 62).

Referencing claim 8, Liu teaches a memory to which said first multimedia file may be downloaded, (e.g., col. 6, lines 28 – 50).

Referencing claim 9, Liu teaches the system includes a media player for playing said first multimedia file in real time, (e.g., Fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a)A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Leeke et al. (6587127) (hereinafter Leeke).

Referencing claim 6, as closely interpreted by the Examiner, Liu teaches the selection interface includes at least one of:

a second selection for storing in a memory said first multimedia file which is downloaded in memory, (e.g., col. 6, lines 28 – 50), but does not specifically teach a first selection for real time play of said first multimedia file which is downloaded. Leeke teaches a first selection for real time play of said first multimedia file which is downloaded, (e.g., col. 5, lines 1 – 48). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Leeke with Liu because real time play or "streaming" enables a user to download a multimedia file while listening to there choice without permanently downloading the multimedia file to their hard-drive, (i.e. RAM instead of disc space). Therefore saving space on the user's hard-drive and also giving the user the option to experience the multimedia file before dedicating resources to the permanent download of the multimedia file.

Referencing claim 7, Liu teaches an interface is provided for selecting from which the listing is created as described above, but does not specifically teach selecting from categories. Leeke teaches an interface is provided for selecting categories from which the listing is created, (e.g. col. 19, line 66 – col. 20, line 42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Leeke with Liu because utilizing categories could enable a user to view specific types of music that they would be more interested in and negate most of the music that would be of no interest to the user, (example, viewing or listing only Heavy Metal instead of Rap).

Claims 10, 11, 13, 14, 17, 18, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu in view of Leeke et al. (6587127) (hereinafter Leeke) and in further view of Eyal (6389467).

Referencing claim 10, Liu teaches a method of retrieving multimedia files over a data network from a remote site in connection with the data network, comprising the steps of:
providing a central processor for searching a plurality of multimedia for a plurality of multimedia files and a schedule of the availability of said plurality of multimedia files, categorizing said plurality of multimedia files, and creating a listing containing information relating to said plurality of multimedia files, (e.g., col. 4, lines 34 – 62);
presenting an interactive interface which includes the listing and through which individual selections may be made for downloading the multimedia files from at least one of the plurality of multimedia, (e.g., Fig. 2 & col. 6, line 28 – col. 7, line 3);

receiving an input through the interactive interface selecting a particular number of the plurality of multimedia files from the listing, (e.g., col. 2, lines 34 – 60 & col. 3, line 65 – 19);

compiling a download schedule based on the received input, wherein the schedule includes a description of the multimedia file selected, time for the download, and download information, (e.g., Abstract et seq.);

based on the input received through the interface, accessing and downloading over the data network, the selected multimedia files from the selected multimedia website, (e.g., col. 2, lines 34 – 60 & col. 3, line 65 – 19), but does not specifically teach a plurality of websites;

download information, including the domain;

wherein said plurality of multimedia websites searched comprise at least two websites in distinct domains of the data network;

the schedule including day and time for the download.

Leeke teaches compiling a download schedule based on the received input, wherein the schedule includes a description of the multimedia file selected, day and time for the download, and download information, (e.g. col. 19, line 66 – col. 20, line 42 & col. 14, lines 52 – 63 & col.15, lines 18 – 50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Leeke with Liu so a user can view when a multimedia file was downloaded exactly or when a multimedia will be downloaded so the user can select future multimedia to download at a specific time. Eyal teaches a plurality of websites, (e.g., col. 1, line 63 – col. 2, line 26);

download information, including the domain, (e.g. col. 2, lines 7 – 42);

wherein said plurality of multimedia websites searched comprise at least two websites in distinct domains of the data network, (e.g. col. 2, lines 7 – 42). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize multiple websites and multiple multimedia files, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.*

Referencing claim 13, Liu does not specifically teach the multimedia files are retrieved according to a time schedule. Leeke teaches the multimedia files are retrieved according to a time schedule, (e.g. col. 14, line 52 – col. 15, line 37). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Leeke with Liu because of similar reasons stated above.

As per claim 21, as closely interpreted by the Examiner, Liu teaches said scheduler is further configured to receive a second list created by an entity in the data network, different than said website searched for said multimedia file, said second list including an identifier of a multimedia file from said entity in the data network and wherein said scheduler is also configured to receive a schedule, created by said entity in the data network, of the availability of said multimedia file from said entity in the data network, (e.g., col. 3, lines 35 – 64 et seq. (the scheduler can be on more than one device or "entity", which can search of a completely different list of multimedia files).

Claims 11, 14, 17, 18 and 20 are rejected for similar reasons as stated above.

Claims 12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liu, Leeke and Eyal as applied to claims 10 and 11 above, and in further view of Martino (5987103).

As per claim 12, Liu, Leeke and Eyal do not specifically teach only a predetermined number of multimedia files may be stored in memory. Martino teaches only a predetermined number of multimedia files may be stored in memory, (e.g. col. 9, lines 39 – 67). It would be obvious to one skilled in the art at the time the invention was made to combine Martino with the combine system of Liu, Leeke and Eyal because it would be more efficient if there was a predetermined number of multimedia files stored because it could free up space to allocate of other files that my require more memory then other multimedia files.

As per claim 19, Liu, Leeke and Eyal teaches the listing is created and transmitted as disclosed above, but does not specifically teach the listing is created and transmitted automatically on a periodic basis. Martino teaches the listing is created and transmitted automatically on a periodic basis, (e.g. col. 10, lines 27 – 38). It would be obvious to one skilled in the art at the time the invention was made to combine Martino with the combine system of Liu and Leeke because it would be more convenient for the system to automatically create and transmit the list so to save time and to automatically update any files that are old.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liu, Leeke and Eyal as applied to claims 10 and 13 above, and in further view of Ten Kate et al. (6601237) (hereinafter Ten Kate).

Referencing claim 16, as closely interpreted by the Examiner, Liu, Leeke and Eyal do not specifically teach any scheduling conflicts between the downloading of multimedia files are detected and the downloading is rescheduled as necessary to resolve conflicts. Ten Kate teaches any scheduling conflicts between the downloading of multimedia files are detected and the downloading is rescheduled as necessary to resolve conflicts, (e.g. col. 6, lines 32 – 46). It would have been obvious to one of ordinary skill in the art, at the time the invention was conceived, to combine Ten Kate with the combine system of Liu, Leeke and Eyal because if more than one multimedia is desired at the same time but only one can be obtained at a time it would be advantageous for a system to reschedule a transmission of a multimedia file that a user would desire so the user is able to receive what was requested without having to re-request for the multimedia file.

Response to Arguments

Applicant's arguments filed 12/19/2005 have been fully considered but they are not persuasive. In the Remarks, Applicant states in substance that the rejections based at least in part on Dwek, Dwek was filed on March 1, 2000 and Applicant has filed by mail on November 3, 2003, a declaration under 37 C.F.R. 1.131 establishing Applicant's date of invention at least as early as

February 18, 1999. In that declarations Applicant presented the Invention Disclosure Form first signed February 18. 1999 and witnessed on February 25, 1999, March 2, 1999, and March 3. 1999. Diligence was established during a critical period, defined in that declaration by the fling date of a provisional application to Eyal of January 24, 2000, to Applicant's fling date of March 2, 2000. Diligence was established in the declaration through attorney records made during the preparation of the application for Applicant. In light of Applicant's date of invention proceeding the March 1, 2000 fling date of Dwek and diligence from at least January 24, 2000 to March 2, 2000, Applicant respectfully requests that Dwek be removed as a prior art reference.

As to part 1, Applicant as not shown diligence in filing for there is almost a year from the last known correspondence to the filing of the Applicant's Application. Furthermore, Applicant has not in anyway proved that the teachings in the information filed in the declaration under 37 C.F.R. 1.131 teaches what is stated in their claim language as stated now nor is there any comparison to what was taught by the Applicant in said documents, just mere allegations. Rejection stands.

In the Remarks, Applicant argues in substance that Liu does not disclose a processing module configured to search a data network for a first multimedia file and a second multimedia file in locations that are situated with distinct domains of the data network.

As to part 2, Examiner would like to draw the Applicant's attention to their claim language. In which the prior art of Liu does teach a processing module configured to search a data network for a first multimedia file and a second multimedia file in locations that are situated with distinct domains of the data network as cited above. The claim language also does not state what a

distinct domain of the data network could be. Furthermore, there is no teachings in the claim language that states that the distinct domains are "separate domains". It is well known in the art that one server could be considered a small domain. Therefore, multiple servers could be multiple small domains, which is taught by the prior art and mentioned by the Applicant in their remarks, i.e. multiple main servers.

Applicant's arguments with respect to claims 10 – 14 and 16 – 21 have been considered but are moot in view of the new ground(s) of rejection from newly added limitation.

(10) Response to Argument

In the Arguments, Appellant argues in substance that a declaration to swear behind Eyal was filed Nov. 3, 2003 and that Appellant did show diligence when the Examiner states that diligence is not shown.

As to the first argument, Examiner would first like to state that Nowhere are the claims linked or mapped to the Enabling portions of the evidences in the Declaration. Examiner would now like to draw the Appellant's attention to their evidence and separated by "Tabs". Tab 1 shows a received stamp of March 11, 1999. Tab 1 state broad ideas about the invention and what is could do. Some of the ideas in this transmission are found in the specification but the evidence does not specifically reflect the claim language. Tab 2 has a date of December 28, 1999, 9 months since a communication between the Attorneys of record and the Appellant. Tab 2 has no claim information or limitations that could be considered allowable. What appears to be Tab 3 is a

Word Processing Work Request Form dated Feb. 2, 2000, 5 weeks. This is also a substantial gap between communications. Furthermore, there is no claim language or subject matter to map to the claims filed 03/02/2000. Tab 4 is dated 02/21/2000 and is nothing more than a communication letter and a Declaration. Yet again nothing stated enabling sections of a specification or claim language.

Besides the evidence not being mapped to the claim language, the evidence submitted by the Appellant has two major gaps, between Tab 1 and Tab 2, about 9 months, and from Tab 2 to Tab 3, about 5 weeks. Tab 1 is the only piece of evidence that has possible claimed subject matter but not only was there 9 months between this and Tab 2, but the information in Tab 1 does not have all the claim limitations that are under rejection. Diligence is not shown between Tabs 1, 2 and 3 and Tabs 2-4 have no claim language nor any teachings of the claimed invention.

The "Grounds of Rejection 2 – 4" fall under the same rational as the first grounds of rejection and are therefore still rejected for the reasons stated above.

In the Arguments, Appellant argues in substance that Liu was not properly submitted in a PTO Form 892 and in the rejection was also improperly cited to reject the claims under 102(e). Appellant notably saw that the prior art of Liu was previously utilized in a rejection dated 09/19/2005, which stated the Patent Number of 5953005 which is the patent number of Liu that was relied upon in the second subsequent rejection.

Appellant further states that Liu does not teach any type of scheduling for the availability of a multimedia file. Appellant further states that the prior art's "applet" is not the same as a "plug-in".

As to this Argument, Examiner would like to apologize for the inconvenience. This was never brought to the attention of the Examiner for one reason, in the response to the Office Action dated 09/19/2005, which first introduced Liu, there was no argument that Liu was missing or anything was wrong with the prior art or finding the prior art since a response was submitted stated that Liu didn't teach the claim language.

Regardless, as can be interpreted by the prior art of Liu, column 3, line 43 et seq. teaches a list of songs from a master server. These songs can be cached at specific terminals in a list of songs. As can be seen in figure 7 and starting at column 6, line 28, a song can be playing while a user is continuing to find other songs to play and therefore is building a schedule or list of songs to play.

As for an "applet" not being the same as a "plug-in", Appellant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

All other arguments are based on the argument above and therefore can be responded to in similar light as above.

Furthermore, Appellant has mislabeled claim 21 as "Withdraw" but treated it as "Canceled". Examiner assumes that the 112 Rejection was proper since the Appellant appeared

to cancel the claim but mislabeled the status of the claim. Examiner still holds the 112 Rejection to claim 21 until the Appellant clearly states that claim 21 is "Canceled".

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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